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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/086,821	05/29/1998	MARCO LARA	ATV-004	8789
8933 7590 04/20/2007 DUANE MORRIS, LLP IP DEPARTMENT 30 SOUTH 17TH STREET PHILADELPHIA, PA 19103-4196			EXAMINER SALAD, ABDULLAHI ELM I	
			ART UNIT 2157	PAPER NUMBER
SHORTENED STATUTORY PERIOD OF RESPONSE			MAIL DATE	DELIVERY MODE
3 MONTHS			04/20/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

<b>Office Action Summary</b>	<b>Application No.</b> 09/086,821	<b>Applicant(s)</b> LARA ET AL.	
	<b>Examiner</b> Salad E. Abdullahi	<b>Art Unit</b> 2157	

– The MAILING DATE of this communication appears on the cover sheet with the correspondence address –

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 26 January 2007.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1, 6-16, 25 and 34-37 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 6-16, 25, and 34-37 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |                                                                                      |                                                                   |
|--------------------------------------------------------------------------------------|-------------------------------------------------------------------|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____                                                          | 6) <input type="checkbox"/> Other: _____                          |

### Response

1. The response filed on 1/26/2001 has been received and made of record.
2. Applicant's argument filed 1/26/2001 with respect to claims 1, 6-16, 25, and 34-37 are not persuasive because of the following reasons.
3. The evidence submitted 7/21/2001 is **insufficient to establish a conception of the invention** prior to the effective date of the Wolff reference. While conception is the mental part of the inventive act, it must be capable of proof, such as by demonstrative evidence or by a complete disclosure to another. Conception is more than a vague idea of how to solve a problem. The requisite means themselves and their interaction must also be comprehended. See *Mergenthaler v. Scudder*, 1897 C.D. 724, 81 O.G. 1417 (D.C. Cir. 1897). In this case, claims 1, 15 and 37 lack a correspondence or a mapping in reference to the declaration and other evidence provided. For example claim 1 recites "receiving web page request at a first web server of plurality of web servers, the first web server assigned to service the request by an interceptor operable to allocate web requests among the plurality, determine whether a predetermined condition exist at the first web server and if the predetermined condition exists, then redirecting by the first server web server at least one of the web page requests from the first web server to another web servers for servicing

Examiner asserts such claim language lacks support in the evidence submitted

4. The evidence submitted is **insufficient to establish diligence** from a date prior to the date of reduction to practice of the Shibata reference to either a constructive reduction to practice or an actual reduction to practice.

What is meant by diligence is brought out in *Christie v. Seybold*, 1893 C.D. 515, 64 O.G. 1650 (6th Cir. 1893). In patent law, an inventor is either diligent at a given time or he is not diligent; there are no degrees of diligence. An applicant may be diligent within the meaning of the patent law when he or she is doing nothing, if his or her lack of activity is excused. Note, however, that the record must set forth an explanation or excuse for the inactivity; the USPTO or courts will not speculate on possible explanations for delay or inactivity. See *In re Nelson*, 420 F.2d 1079, 164 USPQ 458 (CCPA 1970). Diligence must be judged on the basis of the particular facts in each case. See MPEP § 2138.06 for a detailed discussion of the diligence requirement for proving prior invention. Under 37 CFR 1.131, the critical period in which diligence must be shown begins just prior to the effective date of the reference or activity and ends with the date of a reduction to practice, either actual or constructive (i.e., filing a United States patent application). Note, therefore, that only diligence before reduction to practice is a material consideration. The "lapse of time between the completion or reduction to practice of an invention and the filing of an application thereon" is not relevant to an affidavit or declaration under 37 CFR 1.131. See *Ex parte Merz*, 75 USPQ 296 (Bd. App. 1947).

An applicant must account for the entire period during which diligence is required. *Gould v. Schawlow*, 363 F.2d 908, 919, 150 USPQ 634, 643 (CCPA 1966) (Merely stating that there were no weeks or months that the invention was not worked on is not enough.); *In re Harry*, 333 F.2d 920, 923, 142 USPQ 164, 166 (CCPA 1964) (statement that the subject matter "was diligently reduced to practice" is not a showing

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but a mere pleading). **A 2-day period lacking activity has been held to be fatal.** In re Mulder, 716 F.2d 1542, 1545, 219 USPQ 189, 193 (Fed. Cir. 1983) (37 CFR 1.131 issue); Fitzgerald v. Arbib, 268 F.2d 763, 766, 122 USPQ 530, 532 (CCPA 1959) (Less than 1 month of inactivity during critical period. Efforts to exploit an invention commercially do not constitute diligence in reducing it to practice).

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1, 6-16, 25, and 34-37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hu U.S. Patent No. 6,173,322[hereinafter Hu] in view of Wolf U.S. Patent No. 6,185,601[herein after Wolf]

As per claims 1 and 37, Hu discloses a method for distributing browser web page requests among two or more servers, comprising:

receiving web page request at a first web server of plurality of web servers, the first web server assigned (i.e., selected) to service the request by an interceptor operable to allocate web requests among the plurality (see fig. 3 and col. 5, lines 29-33 and col. 13, lines 10-21);

determine whether a predetermined condition exist at the first web server (i.e. failed or overloaded )(see col. 15, lines 11-16); and

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if the predetermined condition exists, then redirecting by the first server web server at least one of the web page requests from the first web server to another web servers for servicing (see col. 6, lines 11-22 and col. 4, line 66 to col. 5, line 8).

HU is silent regarding:

redirecting by the first server web server the web page request from the first web server to another web servers of the plurality for servicing.

Wolff discloses a methods for load rebalancing for clients requests in a network with plurality of servers including redirecting by the first server web server (104A) the web page request from the first web server to another web servers of the plurality for servicing (see figs. 6, 7A and col. 15, lines 15-42). Therefore, it would have been obvious to one having ordinary skill in the art at the time of the invention presented with teaching Hu to incorporate the load balancing mechanism as suggested by Wolff, thus enabling the re-mapping of client request in response to a redirection command emanating from an overloaded node, e.g. server, thereby allowing the clients to optimize throughput between themselves and the network servers.

In considering claim 6, Hu discloses the method of claim 1 wherein the determining comprises monitoring the system load of the host server (see col. 15, lines 1-16).

In considering claim 7, Hu discloses the method of claim 1 wherein the predetermined condition comprises a CPU utilization or memory or failure etc (see col. 9, lines 19-46).

In considering claim 8 Hu discloses the method of claim 1 wherein the predetermined condition comprises a CPU utilization or memory or failure etc (see col. 9, lines 19-46).

In considering claim 9, HU discloses the method of claim 1, wherein the redirecting step comprises redirecting only if the request is for one of a predetermined set of web pages (i.e., dynamic pages or static pages) (see fig. 6 and col. 12, lines 10-42).

In considering claim 10, Hu discloses the method of claim 9, wherein the predetermined set is predetermined by list of web pages included in the web page included in the set (see fig. 6, and col.12, lines 18-66).

In considering claim 11, Hu discloses the method of claim 9, wherein the predetermined set is predetermined by a list of web pages excluded from the set (see col. 12, lines 10-42).

In considering claim 12, Hu discloses the method of claim 1, wherein the redirecting step comprises redirecting only if the request is for web page that does not have state (i.e., web pages not cached) (see fig. 6, and col. 12, lines 10-42 and col. 13, lines 1-21).

In considering claim 13, Hu discloses the method of claim 12, wherein the redirecting step comprises:

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determining whether the web page is included in a list of web pages that have state (i.e., list of cached web pages) (see fig. 6, and col. 12, lines 10-42).

In considering claim 14, Hu discloses the method of claim 1, wherein the predetermined condition comprises failure (see col. 11, lines 60-65 and col. 12, lines 10-42).

As per claim 15, Hu discloses a system for servicing browser web pages requests, comprising:

a first web server operable to redirect from the first web server to a second web server a web page request made of the first web server if a predetermined condition is determined to exist the first web servers (see fig. 2 and col. 5, lines 520-54 and col. 15, lines 11-16); and

a manager for monitoring the first web server to determine if the predetermined condition exists at the first web server and for monitoring the second web server to determine capacity for serving the redirected web page request (see col. 6, lines 11-22 and col. 4, line 66 to col. 5, line 8).

HU is silent regarding:

redirecting by the first server web server the web page request from the first web server to another web servers of the plurality for servicing.

Wolff discloses a methods for load rebalancing for clients requests in a network with plurality of servers including redirecting by the first server web server (104A) the web page request from the first web server to another web servers of the plurality for



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servicing (see figs. 6, 7A and col. 15, lines 15-42). Therefore, it would have been obvious to one having ordinary skill in the art at the time of the invention presented with teaching Hu to incorporate the load balancing mechanism as suggested by Wolff, thus enabling the re-mapping of client request in response to a redirection command emanating from an overloaded node, e.g. server, thereby allowing the clients to optimize throughput between themselves and the network servers.

In considering claim 16, Hu discloses the system of claim 15, wherein the web server is operable to transfer only for predetermined web pages (see fig. 6 and col. 12, lines 10-42).

In considering claim 25, Hu discloses a method of claim 20 wherein distributing is accomplished by an interceptor located on a first host, and redirecting is initiated by an agent (redirection module 212) running on a second host which also hosts the first web server, and wherein the agent is in communication with web server interface and instructs the web server interface to cause the web server to redirect (see col. 5, lines 20-54).

As per claims 34-36 Wolff discloses the method of claim 1, wherein the agent is in communication with the first web server through a web server interface, and instructs the first web server to redirect using commands given through the web server interface (see figs. 6, 7A and col. 15, lines 15-42)..

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

#### **CONCLUSION**

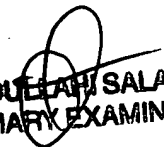
8. The prior art made of record and not relied upon is considered pertinent to the applicant's disclosure.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Salad E. Abdullahi whose telephone number is 571-272-4009. The examiner can normally be reached on 8:30 - 5:00. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ario Etienne can be reached on 571-272-4001. The fax phone number for the organization where this application or proceeding is assigned is **571-273-8300**.

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10. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Abdullahi Salad  
4/16/2007

  
ABDULLAHI SALAD  
PRIMARY EXAMINER